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CANTOR COLBURN, LLP
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BLOOMFIELD, CT 06002

In re Application of:
BING LIN YANG
Serial No.: 09/527,410
Filed: 16 March 2000
Title: SURGE ABSORBER WITHOUT CHIPS

DECISION ON PETITION
TO WITHDRAW HOLDING
OF ABANDONMENT

This is a decision on the petition filed July 12, 2005, requesting that the holding of abandonment in the above-identified application be withdrawn.

The petition to withdraw the holding of abandonment is **DENIED**.

This application was held abandoned for failure to timely file a reply to the non-final Office action mailed October 14, 2004. A Notice of Abandonment was mailed on May 27, 2005.

Petitioner asserts that in response to the non-final Office action, a Reply to the Non-final Office Action with an amendment, a Petition for a Three-month Extension of Time along with authorization to charge fees to deposit account 06-1130 and a Itemized return postcard were timely filed in the US Patent and Trademark Office (USPTO) on April 14, 2005 via deposit into the outgoing mail for the firm Cantor Colburn LLP. This is evidenced by 1) a copy of the Reply to the Non-final Office Action with the amendment, 2) a copy of the Petition for a Three-month Extension of Time along with the authorization to charge fees to deposit account 06-1130, 3) a copy of the Itemized return postcard sent, (which was never returned), 4) a statement by the Daniel Drexler stating that he signed the certificates and deposited them into the outgoing mail and 5) a copy of the attorney's mail log for April 14, 2005.

The Reply to the Non-final Office Action with an amendment and the Petition for a Three-month Extension of Time along with authorization to charge fees to deposit account 06-1130 are not of record in the application file and cannot be located. However,

the procedure for determining whether a response is considered timely filed in the Office is set forth in MPEP § 503.

Applicants may establish that a reply was filed with a postcard receipt that properly identifies the reply and provides prima facie evidence that the reply was timely filed. For example, if the application has been held abandoned for failure to file a reply to a first Office action, and applicant has a postcard receipt showing that an amendment was timely filed in response to the Office action, then the holding of abandonment should be withdrawn upon the filing of a petition to withdraw the holding of abandonment.

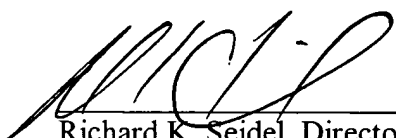
Petitioner does not present a stamped postcard receipt that properly identifies the Reply to the Non-final Office Action with an amendment and the Petition for a Three-month Extension of Time along with authorization to charge fees to deposit account 06-1130 as prima facie evidence of receipt in the USPTO.

Absent a stamped postcard receipt, the date accorded the Reply to the Non-final Office Action with an amendment and the Petition for a Three-month Extension of Time along with authorization to charge fees to deposit account 06-1130 is the date of receipt by the Office. Since no reply was received until the copy was sent on July 12, 2005, there was no timely response to the non-final Office action mailed October 14, 2004.

The application thus became abandoned as a matter of law on January 15, 2004. The petition is therefore denied.

Petitioner may wish to consider filing a petition under 37 CFR § 1.137(a) or (b) requesting that the application be revived. A petition under 37 CFR § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action; (2) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; (3) any terminal disclaimer required pursuant to 37 CFR § 1.137(c); and (4) the petition fee as set forth in 37 CFR § 1.17(m). No consideration to the substance of a petition will be given until this fee is received.

Any inquiry regarding this decision should be directed to Jose G. Dees, Special Program Examiner, at (571) 272-1569.



Richard K. Seidel, Director
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